IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

A.A., a minor child, by and through his next friend, Mirela Demirovic, 20639 N. Dixie Highway Bowling Green, OH 43402 And Mirela Demirovic, individually 20639 N. Dixie Highway Bowling Green, OH 43402 and Alen Demirovic, individually 20639 N. Dixie Highway Bowling Green, OH 43402 Plaintiffs, v. Otsego Local Schools Board of Education 18505 Tontogany Creek Road Tontogany, OH 43565-0290, Wood County, Ohio One Courthouse Square	: :	Case No. 3:15-cv-1747 Judge **COMPLAINT WITH JURY DEMAND** Tony A. Turley (0069379) Gregg A. Peppel (0071477) Thomas P. Timmers (0083937) TURLEY, PEPPEL & TIMMERS LLC 3035 Moffat Road, Suite 200 Toledo, Ohio 43615 T: 419-214-0808 F: 419-419-5394 E-Mail: tony@tpt-law.com gpeppel@tpt-law.com ttimmers@tpt-law.com Attorneys for Plaintiffs

Bowling Green, Ohio 43402, :

Wood County Sheriff's Office :
1960 East Gypsy Lane Road :
Bowling Green, OH 43402, :

and :

Deputy Brian Ruckstuhal :
c/o Wood County Sheriff's Office :
1960 East Gypsy Lane :
Bowling Green, Ohio 43402, :

Defendants. :

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Complaint

Plaintiffs A.A., a minor child, by and through his next friend Mirela Demirovic, Mirela Demirovic, and Alen Demirovic, for their Complaint against the Defendants, Otsego Local School District; Wood County, Ohio; Wood County Sheriff's Office; and Deputy Brian Ruckstuhal, state as follows:

I. Introduction

1. A.A. is a former student at the Otsego Local Elementary School in Tontogany, Ohio. His mother, Mirela Demirovic, brings this action both individually and as guardian and next friend of her son who was the victim of ongoing student-on-student harassment and bullying motivated, at least in part, by A.A.'s national origin. As a result of the school system's deliberate indifference toward the educational rights of A.A., and its failure to protect him from this pattern of harassment and bullying, Otsego Local

District is liable to the Plaintiffs for Damages under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d- 2000d-7.

2. On October 8, 2014, while at school, Deputy Brian Ruckstuhal of the Wood County Sheriff's Office did without cause or provocation assault, forcibly arrest, and detain A.A. with such an excessive amount of force as to cause A.A. to be injured and seek medical attention. These actions deprived A.A. of clearly established rights, privileges, and immunities secured by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and as a result, Deputy Ruckstuhal, Wood County, and the Wood County Sheriff's Office are liable to the Plaintiffs for Damages under 42 U.S.C. §1983.

II. Jurisdiction

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 (3) and (4), this action being authorized by 20 U.S.C. § 1703 and 42 U.S.C. §§ 2000c-8 and 1983 to redress the deprivation of the minor Plaintiff's constitutional rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Further, as to the supplemental claims raised in this Complaint, the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1367(a).

4. Venue for this case properly lies in the Northern District of Ohio, Western Division, in that the Plaintiffs resided therein, and all acts resulting in a violation of Plaintiff A.A.'s rights occurred therein.

III. Identity of the Parties

5. Plaintiff A.A. ("A.A.") is a minor citizen and resident of Bowling Green, Ohio who resides with his mother Mirela Demirovic. A.A. is a Muslim of Bosnian descent, and at all times relevant to this Complaint attended Otsego Elementary School. Plaintiff Mirela Demirovic ("Mrs. Demirovic") is an adult citizen and resident of Bowling Green, Ohio, and is the parent of A.A. Plaintiff Alen Demirovic ("Mr. Demirovic") is an adult citizen and resident of Bowling Green, Ohio, and husband to Mrs. Demirovic. Plaintiffs were residents of Bowling Green, Ohio at all times pertinent to all facts and allegations set forth herein. Mrs. Demirovic brings this Complaint individually and as guardian and next friend on behalf of A.A.

6. Defendant Otsego Local Schools Board of Education ("Otsego") is a local public school system created by and existing by virtue of the laws of the State of Ohio. Otsego is the governing entity having authority over Otsego Elementary School and at all times relevant to this action was a knowing recipient of federal funds.

7. Defendant Wood County is a unit of County government organized under the laws of the State of Ohio.

8. Defendant Wood County Sheriff's Office ("WC Sheriff") is a unit of law enforcement for Wood County, Ohio organized under the laws of the State of Ohio.

9. Defendant Deputy Brian Ruckstuhal ("Ruckstuhal") is a law- enforcement officer employed by Wood County, Ohio and at all times relevant to this

action acted under the color of law. He is sued individually and in his official capacity.

IV. Facts

10. During the academic year 2014-15, A.A. was enrolled as a student at the Otsego Elementary School. From the beginning of that academic year, A.A. began to experience taunting and bullying from the other students based upon his national origin. The abuse was both physical and oral in nature, and occurred both on school grounds as well as on the school bus.

11. Otsego failed to take appropriate action to remedy the situation and protect A.A. The only action taken was to relocate A.A. on the school bus to sit with children of a much younger age, thus exacerbating the problems he experienced with bullying and harassment by his fellow classmates.

12. On or about September 30, 2014, A.A. joined a group of students who were discussing in jest a computer hacking incident wherein one student's computer had been hacked and a threatening message posted. The content of the message was a threat to kill the student that owned the hacked computer system. After joining in the conversation, A.A. joked that he was a computer hacker. As a result of this offhand comment made completely in jest, school officials interrogated A.A. without the knowledge or consent of Mrs. Demirovic, and determined that he, in fact, did not hack into the computer system in question. Regardless, and with reckless disregard for A.A.'s safety and/or reputation at the school, school officials forced A.A. to

write a false letter to the threatened student reading, in pertinent part, "I'm sorry for telling you I was the killer."

13. On October 1, 2014, A.A. was physically assaulted by a student in retaliation for the alleged computer hacking incident. Otsego failed to take any action to protect A.A. from such assault or to punish the student who committed the assault.

14. On October 8, 2014, while at school, A.A. became upset and was instructed to go to the principal's office. He refused. Ruckstuhal happened to be in attendance at Otsego Elementary School in uniform and acting in his official capacity at the time. Ruckstuhal was asked by school officials to escort A.A. to the principal's office. A.A. refused to go.

15. Without cause or provocation, Ruckstuhal physically seized A.A. and attempted to relocate him to the principal's office by force. A struggle ensued, leading to Ruckstuhal repeatedly assaulting and battering A.A. by slamming his body to the floor; detaining A.A. without cause; forcibly placing him in the prone position and restraining him mechanically with handcuffs; and arresting him.

16. Further, at no point during the interaction between Plaintiff A.A. and Ruckstuhal was there (a) an imminent danger of physical harm or "direct threat" to A.A. or to anyone else that required Ruckstuhal to use handcuffs or prone restraint; or (b) a "direct threat" justification for the placement of the handcuffs, the prone restraint, or for the prolonged period of time that the handcuffs and prone restraint were imposed. The only basis for the

handcuffing and prone restraint was Ruckstuhal's desire for compliance from A.A.

17. During this time, Principal Betsey Murry recorded Ruckstuhal's attack on A.A. on Ruckstuhal's cellular phone.

18. After Ruckstuhal forcibly placed A.A. into a position of prone restraint with handcuffs, Mr. and Mrs. Demirovic were called to come to the school. When they arrived, Ruckstuhal showed them the video of A.A. being forcibly seized; placed into prone restraint with handcuffs; and arrested. He informed the Demirovics that A.A. would not be released from handcuffs until he spoke with the Wood County Prosecutor.

19. At this same time, Ruckstuhal informed the Demirovics that A.A. would be charged with several felonies and likely be taken to jail. Ruckstuhal further stated his belief that A.A.'s actions were a result of his Bosnian heritage. When Mrs. Demirovic tried to calm A.A. down by speaking to him in Bosnian, Ruckstuhal instructed her to speak only in English.

20. After allegedly speaking with the Wood County Prosecutor, Ruckstuhal removed the handcuffs from A.A. and released him from custodial arrest. A.A. subsequently required and received medical attention for injuries sustained at the hands of Ruckstuhal.

21. The seizures of Plaintiff A.A. were unreasonable in light of the totality of the circumstances, including but not limited to:

a) The age and size of the child, including the child's limited ability to cause physical harm to others and the child's limited ability to form criminal intent;

b) That at no time did Plaintiff A.A. present a threat of physical harm to himself or others such that restraint was required;

c) That the handcuffing and use of prone restraint violated Ohio Revised Code §2919.22, §3319.46, and the regulations of 1the Ohio Board of Education;

d) The length of time of the handcuffing;

e) The joint manipulation utilized by Ruckstuhal while A.A. was restrained; and

f) The traumas imposed by the handcuffing.

22. By engaging in the acts described herein, Defendants, acting under color of law and with deliberate indifference, violated Plaintiff A.A.'s rights under the U.S. Constitution to be free from unreasonable seizures, excessive force, and cruel and unusual punishment.

23. Fearing for A.A.'s safety, the Demirovics pulled A.A. from the Otsego Elementary Schools and began home schooling him.

24. The Demirovics have made several attempts to transfer A.A. to another local public elementary school. To date, they have been thwarted in those efforts.

V. First Claim for Relief: Violation of Title VI of the Civil Rights Act Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7

25. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

26. Under title VI of the Civil Rights Act of 1964 and its implementing regulations, no individual may be excluded from participation in, be denied the benefits of, nor otherwise be subjected to discrimination on the grounds of race, color, or national origin under any program or activity that knowingly receives federal funds. In addition, the existence of an environment hostile to individuals of a certain national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient also constitutes different treatment on the basis of race or national origin in violation of title VI.

27. Otsego had notice through its agents and employees of the existence of an environment hostile to A.A. on the basis of his national origin at the school he attended.

28. Otsego failed to respond adequately to redress the hostile environment.

29. The harassment and bullying of A.A. was so severe, pervasive, and objectively offensive that, when taken in conjunction with the deliberate indifference of Otsego and its agents and employees, it effectively deprived A.A. of equal access to educational opportunities and benefits provided by the school.

30. Otsego, its agents, and its employees had actual knowledge of repeated acts of harassment and bullying aimed at A.A. on the basis of his national origin and decided to remain idle and complacent. Otsego's actions, taken as a whole, demonstrate deliberate indifference to the harassment of A.A. in violation of 20 U.S.C. § 1703.

31. As a direct consequence of Otsego's actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, and humiliation, for which he is entitled to compensatory damages.

32. As a result of the unlawfully discriminatory actions against her son, Mrs. Demirovic has incurred counseling expenses and is expected to incur future educational and other expenses on behalf of her son.

33. In addition, as a result of the discriminatory actions of Otsego, Mrs. Demirovic has been forced to remove A.A. from Otsego Elementary School and home school A.A. at her expense.

VI. Second Claim for Relief – 42 U.S.C. § 1983

34. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

35. Wood County, WC Sheriff, and Ruckstuhal have, under color of law, deprived A.A. of clearly established rights, privileges, and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution of which a reasonable person would have known. These rights

include, but are not limited to, the right of due process of law, equal protection of law, and the right to be free of unreasonable seizures.

36. As a direct consequence of these Defendants' actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

37. As a result of the unlawfully discriminatory actions against her son, Mrs. Demirovic has incurred expenses and is expected to incur future expenses on behalf of her son, for which she is entitled to compensatory damages and attorney's fees.

VII. Third Claim for Relief – 42 U.S.C. § 1983

38. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

39. Wood County, WC Sheriff, and Ruckstuhal have, under color of law, deprived A.A. of clearly established rights, privileges, and immunities secured by the Eighth and Fourteenth Amendments to the United States Constitution of which a reasonable person would have known. These rights include, but are not limited to, the right of due process of law, equal protection of law, and the right to be protected from cruel and unusual punishments.

40. As a direct consequence of these Defendants' actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and

suffering, for which he is entitled to compensatory damages and attorney's fees.

41. As a result of the unlawfully discriminatory actions against her son, Mrs. Demirovic has incurred expenses and is expected to incur future expenses on behalf of her son, for which she is entitled to compensatory damages and attorney's fees.

VIII. Fourth Claim for Relief – Assault and Battery

42. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

43. Ruckstuhal intentionally and maliciously applied and threatened to apply unlawful, unnecessary, unreasonable, and excessive force to A.A.

44. As a direct consequence of these Defendants' actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

45. As a result of the unlawfully discriminatory actions against her son, Mrs. Demirovic has incurred expenses and is expected to incur future expenses on behalf of her son, for which she is entitled to compensatory damages and attorney's fees.

IX. Fifth Claim for Relief – Negligent Infliction of Emotional Distress

46. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

47. Mr. and Mrs. Demirovic were forced to serve as bystanders to Ruckstuhal's malicious and unwarranted actions when he played the cell- phone-video recording of said actions to them under the false pretense that A.A. had committed a crime.

48. Mr. and Mrs. Demirovic reasonably appreciated the peril faced by A.A. at the hands of Ruckstuhal.

49. As a direct consequence of these actions, Mr. and Mrs. Demirovic have suffered and continue to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which they are entitled to compensatory damages and attorney's fees.

X. Sixth Claim for Relief – Intentional Infliction of Emotional Distress

50. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

51. Ruckstuhal intended to cause, or knew or should have known that his actions would result in serious emotional distress to A.A.

52. Ruckstuhal's conduct was so extreme and outrageous that it went beyond all possible bounds of decency and can be considered completely intolerable in a civilized community.

53. Ruckstuhal's actions proximately caused physical and psychological injury to A.A.

54. As a direct and proximate result of Ruckstuhal’s actions, A.A. suffered serious mental anguish of a nature no reasonable person could be expected to endure, and for which he is entitled to compensatory damages, punitive damages, and attorney’s fees.

XI. Seventh Claim for Relief – False Arrest

55. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

56. Ruckstuhal intentionally and unlawfully seized and detained A.A. against his consent.

57. As a direct consequence of these actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney’s fees.

XII. Eighth Claim for Relief – False Imprisonment

58. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

59. Ruckstuhal intentionally and unlawfully seized and detained A.A. against his consent.

60. As a direct consequence of these actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

XIII. Ninth Claim for Relief – Negligence Per Se

61. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

62. Ohio Revised Code §3319.41 and the regulations of 1the Ohio Board of Education Ohio Admin. Code 3301-35-15 protects students such as A.A. by prohibiting School officials and those under their direction and control from:

    a. The use of mechanical restraints such as handcuffs;

    b. The use of prone restraint;

    c. Restraint of any kind that unduly risks serious harm or needless pain to the student, including the intentional, knowing or reckless use of any of the following techniques:

        1) Any method limiting respiration;

        2) Pinning down with knees to torso, head and/or neck;

        3) Using pressure points, pain compliance and joint manipulation techniques;

        4) Dragging or lifting of the student by the any type of mechanical restraint; and

5) Using students or untrained staff to assist with the hold or restraint.

63. Plaintiff A.A. experienced physical pain, trauma and significant emotional distress during the October 2014 handcuffing and prone restraint. Thereafter, as a result of the handcuffing and prone restraint, he suffered and continues to suffer emotional distress.

64. As a direct consequence of these actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

XIV. Tenth Claim for Relief – Negligence Per Se

65. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

66. Ohio Revised Code §3319.46 and the regulations of 1the Ohio Board of Education Ohio Admin. Code 3301-35-15 protects students such as A.A. by prohibiting School officials and those under their direction and control from:

a. The use of mechanical restraints such as handcuffs;

b. The use of prone restraint;

c. Restraint of any kind that unduly risks serious harm or needless pain to the student, including the intentional, knowing or reckless use of any of the following techniques:

1) Any method limiting respiration;

2) Pinning down with knees to torso, head and/or neck;

3) Using pressure points, pain compliance and joint manipulation techniques;

4) Dragging or lifting of the student by the any type of mechanical restraint; and

5) Using students or untrained staff to assist with the hold or restraint.

67. Plaintiff A.A. experienced physical pain, trauma and significant emotional distress during the October 2014 handcuffing and prone restraint. Thereafter, as a result of the handcuffing and prone restraint, he suffered and continues to suffer emotional distress.

68. As a direct consequence of these actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

XV. Tenth Claim for Relief – Negligence Per Se

69. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 through 24 and do further allege as follows:

70. Ohio Rev. Code 2919.22 provides as follows:

> (A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

> (B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:
>
> (1) Abuse the child;
>
> (2) Torture or cruelly abuse the child; or
>
> (3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child.

71. Defendant Otsego Local Schools, by virtue of its relationship with A.A., had custody and control of A.A. during the school hours.

72. Defendants' actions as taken against A.A. through Ruckstuhal and at the direction of Otsego Local Schools were in direct violation of Ohio Rev. Code 2919.22.

73. Plaintiff A.A. experienced physical pain, trauma and significant emotional distress during the October 2014 handcuffing and prone restraint. Thereafter, as a result of the handcuffing and prone restraint, he suffered and continues to suffer emotional distress.

74. As a direct consequence of these actions, A.A. has suffered and continues to suffer mental anguish, embarrassment, humiliation, pain, and suffering, for which he is entitled to compensatory damages and attorney's fees.

XIV. Prayer for Relief

Wherefore, Plaintiffs respectfully request that this Court render a judgment in their favor and against Defendants, and award damages as follows:

a. Compensatory damages against Defendants in an amount greater than $1,000,000 to be determined by the jury in this case;

b. Punitive damages against Defendants in an amount greater than $1,000,000 to be determined by the jury in this case;

c. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988 or any other applicable law; and

d. An award of costs, interest, and such further relief as this honorable Court deems equitable and necessary to compensate Plaintiffs.

Respectfully submitted,

Turley, Peppel & Timmers LLC

/s/ Gregg A. Peppel
Gregg A. Peppel (0071477)
Attorneys for Plaintiffs

Jury Demand

Plaintiffs demand a trial by jury on all issues so triable.

/s/ Gregg A. Peppel
Gregg A. Peppel (0071477)